Supreme Court, U.S.
FILED
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL BEN GRAVES, PETITIONER

v.

MARY M. SCHROEDER, ET AL., RESPONDENTS;

GARY A. FEESS, ET AL., RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES APPEALS COURT FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Michael Ben Graves, pro se
816 E. 101st Street
Los Angeles, California 90002
(323) 357-0244

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Constitution and Bill of Rights, United States Supreme Court Rule 10, and/or self-enforcing statute 28 USC 455(a) require individual targeted federal judges to (themselves) personally, directly, and timely respond to motion or request for self-recusal, to the individually targeted judge and about himself or herself, pursuant to statute 28 USC 455(a).

2. Whether a federal judge may fail and refuse to personally respond to a motion or request for self-recusal to such judge, about himself or herself, pursuant to self-enforcing statute 28 USC 455(a).

3. Whether federal judges had jurisdiction under Constitution Article III, self-enforcing statute 28 USC 455(a), or any other statute to "handle" motions for self-recusal directed specifically to another judge, about the other judge, under self-enforcing statute 28 USC 455(a).

4. Whether the United States Constitution and Bill of Rights, and/or United States Supreme Court Rule 10, require federal judges to proceed in federal court cases with guidance and direction through, and in compliance with, Supreme Court Rule 10.

5. Whether federal judges failed and refused to accord a jury trial to pro se Graves as required by Constitution Amendment VII.

6. Whether federal judges failed and refused to accord due process to pro se Graves as required by Constitution Amendment V.

7. Whether federal judges failed and refused to accord to pro se Graves the required hearings, pursuant to Constitution Amendment V.

8. Whether federal agencies, employees, attorneys, and/or federal judges violated Constitution Article VI.

9. Whether federal judges issued orders which violate the Separation of Powers doctrine.

10. Whether a federal judge issued a critical trial order in a case in which said federal judge was not the assigned trial judge in the case.

11. Whether there is a conflict of interest and/or whether there exists violations of the Separation of Powers doctrine including Central District U.S. Attorney Yang and staffers Weidman, Luymes, and Lester, with Central District Court judges and 9th Circuit Court judges.

12 Whether defendants and/or their attorneys interfered with and/or obstructed the judicial process.

13. Whether the Central District Court judges and/or the 9th Circuit Court judges departed far from the accepted and usual course of judicial proceedings, sanctioned such departure by a lower court, and/or decided Constitution or other important federal questions in ways that conflict with relevant decisions of the Supreme Court.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the court whose judgment is the subject of this petition is as follows:

Petitioner

1. Petitioner is Michael Ben Graves. Petitioner is the pro se appellant and plaintiff in the actions described above, primarily related to 9th Circuit Court case numbers **04-55138 (appendices "A" - "C") and 04-55211 (appendices "D" - "E")** (but including related case numbers 04-56064, 04-55870, and 04-55845). The petitioner represents himself in pro per status:

Michael Ben Graves, pro se
816 E. 101st Street
Los Angeles, California 90002
(323) 357-0244

Respondents

1. Respondents are United States Central District Court Judge Gary A. Feess and Magistrate Charles F. Eick in the 04-55138 case and 9th Circuit Chief Judge Mary M. Schroeder and the 9th Circuit Judicial Council

in the 04-55211 case. The Respondents are appellees and defendants in the actions described above. The Respondents are represented by:

Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530.

U.S. Attorney Yang and Asst. U.S. Attorneys
Lester, Luymes, and Weidman;
Room 7516, Federal Building
300 N. Los Angeles Street
Los Angeles, California 90012.

Other Respondents

1. Respondents are District Court Judges Gary Feess, Percy Anderson, and John Walter; and U.S. government officials and attorneys Attorney General John Ashcroft, U.S. Attorney Debra Yang and staffers Asst. U.S. Attorneys Luymes and Weidman; and the EEOC's Stephanie Garner and the VA's Joseph Vallowe. The Respondents are appellees and defendants in related cases. The Respondents are represented by:

Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530.

U.S. Attorney Yang and Asst. U.S. Attorneys Lester, Luymes, and Weidman;
Room 7516, Federal Building
300 N. Los Angeles Street
Los Angeles, California 90012

2. Respondents are attorneys Patrick Cain and "Rosenthal and Smith" and government contractor AdvanceMed/DynCorp, a division of government contractor Computer Sciences Corp (CSC). The Respondents are appellees and defendants in related cases. The Respondents are represented by:

Patrick Cain and "Rodi-Pollock"
444 S. Flower, Suite 1700
Los Angeles, California 90071

IT SHOULD BE NOTED HERE THAT THERE IS GROSS CONFLICT OF INTEREST AND/OR VIOLATIONS OF THE SEPARATION OF POWERS DOCTRINE INVOLVING THE RESPONDENTS ABOVE. THERE ALSO EXISTS IN THE PRESENT AND RELATED CASES FILING OF KNOWN FORGED AND FRAUDULENT DOCUMENTS AND OTHER UNLAWFUL ACTIONS BY DEFENDANTS AND THEIR ATTORNEYS WHICH INTERFERE WITH THE ADMINISTRATIVE & JUDICIAL PROCESSES. DETAILS FOLLOW WITHIN THE PRESENT DOCUMENT.

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Relevant Statutory Provisions

1. In both cases 04-55138 and 04-55211 the 9th Circuit Judges O'Scannlain/Rymer/Bea, and 9th Circuit Judges Leavy/Thomas/Fisher, respectively, issued both a final Memorandum which grants summary affirmance, without the required hearing pursuant to Constitution Amendment V, in favor of the defendants, and an order which both denies the petition for rehearing en banc and refuses in advance any subsequent pro se Graves filings, including any filings such as for clarification or "construction as a matter of law" of the ambiguous orders or motions or requests for self-recusal to any of the judges, about himself or herself, pursuant to self-enforcing statute 28 USC 455(a). Therefore, the relief or appeal sought here is unavailable in the 9th Circuit Court or any other court other than the Supreme Court.

2. The Supreme Court has jurisdiction and authority to handle the present Petition for Writ of Certiorari under U. S. Constitution Art. III and Supreme Court Rule 10.

3. The Supreme Court has jurisdiction and authority to handle the present Petition for Writ of Certiorari regarding statute 28 USC 455(a) under United States Constitution Article III and through Supreme Court Rule 10. See

Union Carbide Corp. v. U.S. Cutting Service, Inc., 782 F.2d 710 (7th Cir. 1986) at 712. See *In re International Business Machines Corp.*

4. The Supreme Court has jurisdiction and authority to handle the present Petition for Writ of Certiorari through the oath of all judges and justices to uphold the United States Constitution, pursuant to Constitution Art. VI.

5. Federal judges lack jurisdiction to "handle" a motion for self-recusal directed to another judge, about the other judge, under self-enforcing statute 28 USC 455(a). A judge is not immune for actions....taken in the complete absence of all jurisdiction." See Mireles, 502 U.S. at 11-12.

Constitutional Provisions

1. United States Constitution states that the lower or lesser courts have limited jurisdiction as specified by Constitution Article III and as ordained and established by the Congress. Only an identified targetted federal judge has jurisdiction to "handle" a motion or request for self-recusal, to him or her and about himself or herself, under self-enforcing statute 28 USC 455(a).

2. The United States Supreme Court provides guidance and direction to the inferior

courts, under the authority of Article III and through Supreme Court Rule 10.

3. The United States Constitution and Bill of Rights guarantee Amendments V and VII protections to pro se Graves.

4. Federal officials, attorneys, and judges take an oath of office to uphold the Constitution, pursuant to Constitution Article VI.

5. Federal officials, attorneys, and judges take an oath of office to uphold the "supreme law of the land" which includes United States statutes such as Title VII and other Civil Rights Laws and self-enforcing 28 USC 455(a)

Prior related lower court actions

1. For nearly two years continuously, pro se Graves properly and repeatedly submitted in the present and related cases motions and/or requests for self-recusal separately to federal judges in both the District Court and in the 9th Circuit Court due to judicial misconduct and the appearance of partiality against pro se Graves and in favor of defendants, pursuant to self-enforcing statute 28 USC 455(a). The individually targetted District Court judges failed and refused to comply with the self-enforcing statute with requirements to address "presumed true facts" within the motions, and

continued to fail and refuse to accord to pro se Graves either due process or the required jury trials in the related cases, pursuant to Const. Amendments V and VII respectively. The individually targeted 9th Circuit Court judges simply failed and refused even to respond to motions and requests for self-recusal to them and about themselves, or about the lower court judges, pursuant to self-enforcing statute 28 USC 455(a). Non-targeted judges in both the district court (including Judges Lourdes Baird and John W. Walter) and in the 9th Circuit Court unlawfully violated and circumvented motions and requests for self-recusal to targeted judges under self-enforcing statute 28 USC 455(a) by unlawfully having a non-targeted judge "handle" the case under different statute 28 USC 144 and failing and refusing even to address or respond to the "presumed true" facts in the motion papers. The 9th Circuit judges also rejected without explanation pro se Graves' properly filed follow-up Petitions for Writ of Mandamus, filed during district court litigation, regarding the District Court judges' failure and refusal to comply with self-enforcing statute 28 USC 455(a). Therefore, the judges in both the district court and in the 9th Circuit Court defied the authority and direction from the Supreme Court spelled out in Supreme Court Rule 10.

2. Throughout the present cases and related cases continuously, the judges in both the District Court and the 9th Circuit Court failed and refused absolutely even to address pro se Graves' charges and complaints of judges and defendant attorneys flagrantly violating Constitution Articles III and VI, and Amendments V and VII, as well as violating specified U.S. statutes including Title VII and 28 USC 455(a).Therefore, the judges defied authority and direction from the Supreme Court spelled out in Supreme Court Rule 10.

3. The district court and 9th Circuit Court judges dismissed the present cases (and related cases) while failing and refusing absolutely the required by Constitution Amendments V and VII, hearings, discovery, jury trial, and/or direction from the Congress and the Supreme Court spelled out in Constitution Articles III and VI and Supreme Court Rule 10.

4. Based on the above, and Court Orders in appendices "C" and "F", the 9th Circuit disallowed any pro se Graves filings subsequent to said orders. Indeed, the Appeals Court judges in the present and in all of the related cases, state with specificity and in advance that they refuse any subsequent motions or other filings from pro se Graves, not only for "reconsideration, rehearing, etc." but as well for "clarification, stay of orders, etc.", which

includes refusal of motions or requests for self-recusal to any of the judges under self-enforcing statute 28 USC 455(a). It should be noted here also that self-enforcing statute 28 USC 455(a) does not require a "formal" motion or other filing to the judge, i.e. simply making the judge or court aware of such request for self-recusal is adequate.

5. District Court trial Judge Audrey Collins in a related case failed and refused even to address the "conflict of interest and/or violations of Separation of Powers doctrine" which Graves filed to her regarding and involving defendant attorneys U.S. Attorney Yang and staffers Weidman, Luymes, and Lester, with Central District judges and with 9th Circuit judges.

Supreme Court Rule 14

1. Attached as Appendices "A-C" are the relevant orders and judgments in the present case **#04-55138**; Appendices "D-F" are relevant orders and judgments in the present case **#04-55211**. However, the judicial misconduct and attorney misconduct in the present cases are related to the misconduct in related cases in both the district court and in the 9th Circuit Court. **The present petition for writ of certiorari to the Supreme Court will aid the Supreme Court because** the identified misconduct and attacks on the United States, its Constitution and Bill of Rights, also touch

specifically on the failure and refusal of lower court judges during litigation and adjudication to be guided by or to comply with the jurisdiction and authority of the Supreme Court as spelled out in Supreme Court Rule 10.

Statement of the Case

1. Approximately three years ago, pro se Graves reported to the VA's Inspector General official Joseph Vallowe and his staff and superiors, fraud against the VA by Graves' then employer (and defendant in a present related case) government contractor AdvanceMed/DynCorp. Graves also reported retaliation perpetrated against him by his then employer subsequent to Graves reporting the fraud to the VA. However, Mr. Vallowe and his staff and superiors simply ridiculed Graves and covered up the matter, with Mr. Vallowe falsely claiming in writing that he both refuses to investigate and matter and that he was altogether unable to locate or provide to Graves any related AdvanceMed and/or DynCorp documents, properly requested by Graves under the FOIA, because the company AdvanceMed and/or DynCorp did not then in 2001 do, nor had it ever previously done, any work for the VA. This was of course later found to be a lie because AdvanceMed and/or DynCorp had VA contracts. Indeed, Graves reported fraud against the VA regarding at least one of its contracts in the year 2001.

2. Nearly three years ago pro se Graves reported and filed to the EEOC gender discrimination and retaliation perpetrated against him by his then employer government contractor AdvanceMed/DynCorp, including regarding activities on contracts with the VA.

3. Immediately after the above, i.e. in February, 2002, government contractor AdvanceMed/ DynCorp terminated Graves' employment and alleged that it was "leaving the coding business". It is significant to note here that in later multiple Court Orders by Judge Percy Anderson in the present cases, Judge Anderson falsely states that pro se Graves filed his complaints to the EEOC subsequent to (instead of prior to) Graves' employer terminating Graves' employment. This is a critical issue in the present case.

4. Throughout 2002, the EEOC's attorney and FOIA officer Stephanie Garner and staff and superiors, and the VA's Joseph Vallowe and staff and superiors, gave Graves the run-around and dismissed his complaints of discrimination, fraud/"Whistleblower", and retaliation, while unlawfully failing and refusing to produce related to the matters documents which Graves properly requested under the FOIA. The OFCCP and JRC also failed and refused to comply with the FOIA regarding relevant to the matters documents

including EEO-1 Reports. Indeed, it is most significant then at during litigation of the present and related cases that the EEOC failed and refused to produce documents entitled EEO-1 Reports for government contractor AdvanceMed/DynCorp, which Graves properly requested under the FOIA, though Title VII Civil Rights Act of 1964 (amended) with EO11246 and 41 CFR 60-40 specifically states that the EEOC shall not deny FOIA Requests for any government contractor EEO-1 Reports. In addition, the OFCCP is requied by law and EO11246 to enforce this directive. Accordingly, Graves filed lawsuits against government agencies the EEOC, JRC, VA, and OFCCP, and government contractor AdvanceMed/DynCorp regarding the various instances of discrimination, retaliation, "whistle blower", wrongful termination, etc. Graves demanded a jury trial regarding the relevant claims in the different but related cases. All of the cases were assigned to trial Judge Gary Feess and discovery Magistrate Charles Eick.

5. For nearly two years, trial Judge Gary Feess gave pro se Graves the run-around regarding each and all of the cases. That is, Judge Feess simply "dropped" all cases against the federal defendants except the FOIA claims, then later granted summary judgment to the defendants regarding these claims as well. Judge Feess also "dropped" several of Graves' claims against AdvanceMed/DynCorp which

required a jury trial, then later "restored" the case, at great costs to Graves, after Graves attempted to appeal the matter to the 9th Circuit. Judge Feess then "combined" the Whistleblower case with other cases against AdvanceMed/DynCorp and immediately failed and refuse to permit Graves any discovery regarding the Whistleblower matter. Assigned discovery Magistrate Charles Eick grossly exploited and took advantage of pro se Graves, in defiance of Constitution Amendment V and FRCP 8, primarily by (a) refusing any and all discovery hearings prior to discovery cut-off date, (b) issuing an order which unlawfully "exempted" each and all defendant federal agencies from compliance with FRCP 33(a) and 33(b)(1) requirements to respond to interrogatories, which included mandatory discovery data under FRCP 26(a) and 26(b), through a designated officer or agent and under oath, and (c) refused to disallow as critical evidence in the case known forged and fraudulant documents submitted by defendant AdvanceMed/DynCorp attorneys Patrick Cain and "Rosenthal and Smith" during the Graves deposition in Cain's office which Judge Feess ordered Graves to attend prematurely during litigation, and (d) outright ridiculing and insulting and taking advantage of pro se Graves through misuse of LR 37 by Magistrate in conjunction with all defendant attorneys. Indeed, Graves never even met Magistrate Eick over the many months of alleged "discovery"

proceedings, i.e.each and every scheduled hearing was abruptly canceled by Magistrate Eick with a subsequent order in favor of the defendants and their attorneys and which ridiculed and insulted pro se Graves . Trial Judge Gary Feess reiterated and supported all of the unlawful actions by Magistrate Eick, up until the discovery cut-off date which Judge Feess failed and refused to extend either at that time or later under FRCP 56(f). That is, Mag. Eick and Judge Feess, in conjunction with defendant attorneys, primarily misused LR 37 to exploit and take advantage of pro se Graves at costs of thousands of dollars and months of wasted time to pro se Graves. Judge Feess then granted summary judgment dismissal for all defendants without any FRCP 33 discovery or any other meaningful discovery to show for the many months of alleged discovery proceedings. Judge Feess failed and refused to proceed with the defendants' motions for summary judgment proceedings in accordance with FRCP 56, LR 56 and Judge Feess' own Rules. Indeed, the alleged summary judgment proceedings for defendant AdvanceMed/DynCorp was nothing more than a thinly disguised trial by judge without the demanded jury required by Constitution Amendment VII. The alleged summary judgment proceedings in favor of the EEOC was nothing more than a thinly disguised unlawful effort on the part of Judge

Feess to violate and circumvent Title VII and EO11246 by directing the EEOC to deny and to continue to deny FOIA Requests for government contractor EEO-1 Reports, though Title VII Civil Rights Act of 1964 (amended) with EO11246 and 41 CFR 60-40 specifically state that the EEOC shall not deny FOIA Requests for government contractor EEO-1 Reports. Therefore, Judge Feess usurped the Constitutional authority of the Congress to make laws (Title VII) and the President to enforce the laws and to administrate government contracts and contractors. Judges Feess and Lourdes Baird violated and circumvented motions for self-recusal to Judge Feess about Judge Feess by having Judge Baird "handle" the matter under a different statute, 28 USC 144, though Judge Baird had no Constitutional or 28 USC 455(a) jurisdiction to do so. Judge Feess issued a bogus alleged final and immediately appealable judgment in favor of defendant AdvanceMed/ DynCorp, while refusing the required jury trial. Judge Feess' judgment also ordered pro se Graves to pay to attorneys Patrick Cain and "Rosenthal and Smith" thousands of dollars in costs for an earlier and premature Graves deposition which Judge Feess had ordered Graves to attend. This was the same deposition during which attorneys Cain and "Rosenthal and Smith" submitted known forged and fraudulant evidenciary documents under oath.

AdvanceMed/DynCorp. Judge Feess had used the known forged and fraudulant documents as critical evidence in granting summary judgment to AdvanceMed/DynCorp. After thousands of dollars in costs and wasted time to pro se Graves, the 9th Circuit Court simply dismissed Graves attempts to appeal the alleged finalorder by Judge Feess, due to the 9th Circuit'claim that it had no jurisdiction because, though Judge Feess stated and reiterated that his judgment was final and immediately appealable, it was not in fact a final judgment. However, Judge Feess failed and refused even to address the matter of the thousands of dollars he had penalized pro se Graves, related to Judge Feess' bogus "final judgment". Judge Feess later filed "final judgments" in favor of all the defendants in all the cases regarding all of the claims, in the related case #04-55845 in the 9th Circuit Court.

6. Pro se Graves filed additional related lawsuits (a) against trial Judge Feess and Magistrate Eick (present appeal #04-55138) regarding misconduct in the above related case, and (b) against 9th Circuit Chief Judge Mary Schroeder and the 9th Circuit Judicial Council (present appeal #04-55211) regarding failure and refusal to take action regarding all of the above misconduct and including specifically misuse of LR 37. Judge Schroeder and 9th Circuit Clerk Cathy Catterson initially

attempted to circumvent the properly served Complaint and summons to Chief Judge Schroeder by falsely claiming just before the answer to Complaint was due that they had no idea of what to do with such documents. Pro se Graves spent additional money and wasted additonal time re-serving the documents a second time. It should also be noted that Chief Judge Schroeder "objected" to improperly dismissed outright, to the present inclusive, Graves' complaints of judicial misconduct properly addressed to her regarding misconduct by federal judges in the Central District Court and in the 9th Circuit Court, by Judge Schroeder and the 9th Circuit Judicial Council claiming that such complaints against federal judges are "improper" and unlawful, even though said judges violated the United States Constitution. Pro se Graves also filed a related lawsuit against Attorney General John Ashcroft; U.S. Attorney Debra Yang and staffers Leon Weidman and Jan Luymes, the EEOC's Stephanie Garner, the VA's Joseph Vallowe, and AdvanceMed/DynCorp's attorneys Patrick Cain and "Rosenthal and Smith", primarily regarding misconduct and interfering with the judicial and administrative processes in the related cases. The present cases **04-55138 and 04-55211,** and related cases 04-55870 and 04-55845 were all assigned to trial Judge Percy Anderson for handling as related cases. Pro se Graves demanded a jury

trial in case 04-55870. However, Judge Anderson simply insulted and ridiculed pro se Graves over several months of the run-around prior to dismissing each and all of the cases under FRCP 12(b)(6) with prejudice, while failing and refusing to accord to pro se Graves the required FRCP 12(d) hearing pursuant to Constitution Amendment V or the jury trial in one case pursuant to Constitution Amendment VII or to permit pro se Graves to amend his claims pursuant to FRCP 15(a). Judge Anderson also pointedly falsely stated and misrepresented the Complaint claims and evidence to favor the defendants. Judge Anderson pointedly failed and refused to address any of the charges and complaints of misconduct and attacks on the U.S. Constitution and Bill of Rights. In one case, the one requiring a jury trial, Judge Anderson directed Judge John Walter to dismiss Graves' previously submitted amended Complaint, though Judge Walter was not the trial judge. In the present case and though Judge Anderson had previously ordered that none of the federal defendants shall fill any opposing papers to the proposed amended Complaint., Judge Anderson in his order pointedly falsely stated and grossly misrepresented the Complaint content and facts to favor the defendants by (a) falsely stating that Graves filed his discrimination and other charges to the EEOC after his employment was terminated, though Graves was terminated

immediately after he filed the charge, and (b) falsely stating that Graves first filed complaints of violations of Constitution Article VI and Amendment V in his proposed SAC (which Judge Anderson rejected without defendant answers), though these are key and critical issues clearly identified in the original Complaint. Judge Anderson also insulted and ridiculed pro se Graves in the orders by ridiculously stating that a complaint issue is "environmental violations" instead of violations of the Equal Pay Act. Judges Anderson and Walter joined together as a conspiracy to violate and circumvent the motions and/or requests for self-recusal to Judge Anderson about Judge Anderson, under self-enforcing 28 USC 455(a), by unlawfully handling" the matter under different statute 28 USC 144, though there was no Constitutional or statute 28 USC 455(a) jurisdiction to do so.

7. Pro se Graves filed one other additional related lawsuit against Judges Feess, Anderson, and Walter regarding the above misconduct in the different cases. The case was assigned for hearing to trial Judge Audrey Collins. Judge Collins simply gave pro se Graves the run-around, then unlawfully dismissed each and all charges against all defendants under FRCP 12(b)(6) with prejudice, while failing and refusing to accord pro se Graves the required FRCP 12(d) hearing pursuant to Constitution

Amend. V. Judges Collins and other judges including Judge Lourdes Baird also violated and circumvented, and conspired to violate and circumvent Graves motions for self-recusal to Judge Collins, about herself, under self-enforcing statute 28 USC 455(a), by unlawfully having judges other than Judge Collins "handle" the matter under different statute 28 USC 144, though the judges had no Constitutional or 28 USC 455(a) statute jurisdiction to do so.

8. There was and remains a conflict of interest and flagrant violations of the Constitution's Separation of Powers doctrine involving defendant attorneys Central District U.S. Attorney Debra Yang and staffers Weidman, Luymes, and Lester in all of the related cases involving Judges Feess, Collins Anderson, Walter, and Schroeder, and Magistrate Eick. At times, the defendant federal attorneys defended federal agencies and officials separately before Judges Feess and Anderson and Magistrate Eick; at other times, the attorneys were themselves defendants before Judge Anderson; at other times the attorneys defended Judge Anderson before Judge Collins; at other times the attorneys defended federal agencies before Judge Feess and Magistrate Eick; at other times the attorneys defended Judge Feess and Magistrate Eick before Judge Anderson, at other times the

attorneys defended 9th Circuit Chief Judge before Judge Anderson and later before different 9th Circuit judges; and at other times the attorneys represented themselves and all of the above before the same partial 9th Circuit Judges who continue to the present to dismiss cases without hearings and while refusing even to respond to motions for self-recusal under self-enforcing statute 28 USC 455(a). Each and all of the above identified judges, and each and all of the above identified attorneys, failed and refused to the present inclusive even to discuss the many gross improprieties unlawful acts and abuse of power in the present and related cases.

9. The 9th Circuit Judges improperly dismissed and conspired to dismiss the present cases **04-55138** and **04-55211,** as well as the related cases, using enclosed orders similar orders to improperly dispose of the different cases. Although CR 3-6 requires pro se Graves to have the opportunity to "show cause" prior to dismissal any case under this Rule, the judges dismissed both entire present cases 04-55138 and 04-55211 as "insubsantial questions" based on this Rule, while failing and refusing to accord pro se Graves the right to show cause prior to dismissal in either case. Similar dismissals were made in related cases. Although FRAP 34(a)(2) requires the judges to review all briefs prior to dismissing any case

under this rule, the judges dismissed both entire present cases **04-55138 and 04-55211** under FRAP 34(a)(2) while failing and refusing to require defendants to file their required briefs for review, in response to pro se Graves' already filed brief, in each case. Although FRAP 34(a)(2) disallows dismissal of any cases under this rule without a hearing for the reason "insubstantial questions", the judges dismissed both present entire cases **04-55138** and **04-55211** for alleged "insubstantial questions", and while refusing the required hearing, under FRAP 34(a)(2). In case **04-55211,** federal defendants attorney Robert Lester secretly filed a motion for summary affirmance for Chief Judge Mary Schroeder, while failing to serve the motion papers to pro se Graves. Pro se Graves inadvertantly discovered this misconductg and promptly reported to the Court that he had not been served such motion papers. To protect himself against this gross misconduct, Graves both reported the misconduct to the court and filed an identified "catch all" opposing papers to beat the deadline. However, see appendix "E" page #1. Judges Leavy, Thomas, and Fisher, who also failed and refused even to respond to Graves' motions for self-recusal due to appearance of partiality against pro se Graves, falsely stated the case to favor the defendants. That is, the judges simply failed and refused to discuss the non-served motion papers and

falsely stated only that pro se Graves filed "late" opposing papers. The judges at the same time dismissed the entire case through three avenues calculated to confuse the case and to take advantage of pro se Graves, i.e. through summary affirmance, "insubstancial questions", and FRAP 34(a)(2). Court Clerk Cathy Catterson and staff failed and refused even to respond regarding (a) whether the motions or requests for self-recusal were delivered to the judges, and (b) Graves' complaints and requests for disqualification of Court Clerk Catterson and specified staffers due to impropriety and interfering with the judicial process. In one related case, defendant Judge Schroeder and other 9th Circuit judges, along with Court Clerk Catterson and staffers, attempted to derail the case by secretly "deleting" and "erasing" two defendant parties, i.e. the OFCCP and AdvanceMed/DynCorp, from 9th Circuit Court records. Judges Nelson and Graber used legal and judicial trickery later, after pro se Graves discovered the misconduct, to appear to "add" the defendant OFCCP back to the case after it was erased, while simultaneously "erasing" a different defendant "Joint Reporting Committee" from 9th Circuit Court records. The judges in that case finally conceded that the defendants must file their required briefs, after which the defendants filed bogus briefs which improperly failed to address any of the questions or issues

properly submitted for review by pro se Graves in his already filed brief. The defendants' so-called briefs also improperly contained hundreds of pages of non-relevant papers calculated to confuse the case and to increase the costs of litigation to pro se Graves. In the same case, defendant attorney Jan Luymes requested maximum allowed 14 day extention of time to file her brief, while Graves then filed a motion for the automatic extention to file his Reply brief to the "multiple" response briefs. However, the judges granted to Ms. Luymes a disallowed by Rule 31 day extention to file her brief while simultaneously refusing any extention of time whatsoever for pro se Graves to file his reply brief. See CR 31-2.2 and CR 28-4. Based on the above in total, pro se Graves filed motions to strike each and all federal defendants' and defendant AddvanceMed/DynCorp's improper briefs. Each and all defendants failed to timely file their opposition to the motions, yet the judges rejected without explanation pro se Graves' subsequent motion to strike the briefs, while simultaneously in the same order refusing in advance any subsequent attempts by pro se Graves to file motions for clarification of the ambiguous orders. .

Arguments

1. The district court judges violated and unlawfully circumvented self-enforcing statute 28 USC 455(a) by "handling" the matter through a different judge and under different statute 28 USC 144. Therefore, the judges violated Constitution Articles III and VI as well as the statute itself. Re: Questions 1-3.

2. The 9th Circuit court judges violated and unlawfully circumvented self-enforcing statute 28 USC 455(a) by failing and refusing even to respond to the self-enforcing statute. Therefore, the judges violated Constitution Articles III and VI as well as the statute itself. Re: Questions 1-3.

3. Each and all district court judges in the present and related cases departed far from the accepted and usual course of judicial proceedings, and as well decided Constitution and other important federal questions in ways that conflict with relevant decisions of the Supreme Court, thus defying Supra Rule 10. Examples of these unlawful practices, but not the only instances of such unlawful practices, are where Judges Anderson and Collins flagrantly dismissed entire cases under FRCP

12(b) with prejudice, while failing and refusing (a) to accord pro se Graves the required FRCP 12(d) hearing pursuant to Constitution Amendment V, (b) to comply with the Rule 8 standard regarding pro se pleadings, (c) to accord pro se Graves the right to amend his pleading or claim under FRCP 15(a), and (d) to address the critical matter of conflict of interest and/or violations of the Separation of Powers doctrine including U.S. Attorney Yang and staffers with Central District Court Judges. Re: Question 4.

4. Each Circuit Court judge in the present and related cases departed far from the accepted and usual course of judicial proceedings, sanctioned such departure by the district court judges in the present and related cases, and decided Constitution and other important federal questions in ways that conflict with relevant decisions of the Supreme Court, thus defying Supra Rule 10. Examples of these unlawful practices, but not the only instances of such unlawful practices, are where 9th Circuit Judges flagrantly dismissed entire cases under FRAP 34(a)(2), while failing and refusing (a) to accord pro se Graves the required FRAP 34 and CR 34 hearing pursuant to Constitution Amendment V, (b) to comply with the FRAP 34(a)(2) requirements to review defendants' briefs and not to dismiss the case

without hearing for reason "insubstantial questions" regarding pro se Graves' brief, (c) to accord pro se Graves the right to show cause under CR 3-6, (d) to address misconduct by the lower court judges, and (e) to address the critical matter of conflict of interest and/or violations of the Separation of Powers doctrine including U.S. Attorney Yang and staffers with Central District Court judges, as well as with 9th Circuit Court judges.. Re: Question 4.

4A. There was no proper FRCP 56 "summary judgment" dismissal of the related case 04-55845 which required a jury trial before Judge Feess or any "proceeding" whatsoever, other than FRCP 12(b)(6), in related case 04-55870 before Judge Anderson which required a jury trial. Therefore both Judges Feess and Anderson flagrantly deprived pro se Graves of the demanded and required jury trial pursuant to Constitution Amenement VII. Judge Feess is a defendant in the present cases and Judge Anderson was the trial judge in such same related cases. Judges Feess and Anderson then accordingly violated Constit. Articles III and VI. Re: Ques. 5.

5. The federal judges in both the district court and appeals court in the present cases, and related cases failed and refused to accord pro se Graves required hearings, discovery, proper FRCP 56 and 54(b) proceedings and handling respectively, and a jury trial. Re: Q6.

6. The defendants and their attorneys in both the present cases, and in related cases, violated Constitution Article VI by failing and refusing to uphold the United States Constitution and specified United States statutes as the "Supreme Law of the Land". Re: Question 8.

7. Judge Feess violated the Separation of Powers doctrine in a related case, a charge in the present case, by issuing an order to the EEOC to deny FOIA Requests for government contractor EEO-1 Reports, thus usurping the power of the Congress to make laws and the President to enforce laws or administrate government contracts and contractors. See Title VII Civil Rights Act (amended) with EO11246 and 41 CFR 60-40. Re: Ques. 9.

8. Judge John Walter unlawfully and without jurisdiction issued a critical trial order in favor of the defendants and against pro se Graves, in a related case involving present defendants, in which he was not the assigned trial judge. Re: Question 10.

9. There is clearly a conflict of interest and violations of the Separation of Powers doctrine where Administration and Judicial officers switch places as defendants, defendant attorneys, trial judges, etc. in efforts to deprive pro se Graves of due process and/or jury trials in the present and related cases. Re: Ques. 11.

10. The gross misconduct by each and all of the defendant attorneys described in the statement of the case and above comprises flagrant intertering with and obstructing the judical process. See Ques. 12.

11. Both the District Court Judges and the 9th Circuit Judges defied and conspried to defy the authority and direction of the Supreme Court through Supra Rule 10. See Ques. 13.

Exceptional Circumstances

1. Exceptional circumstances warrant the exercise of the the Court's discretionary powers because each and all presented issues above comprise upholding the United States, its Constitution and Bill of Rights, and protections for the American people from judicial tyranny and from Justice Department tyranny and from the tyranny of a lawbreaking government contractor that is AdvanceMed/DynCorp and their lawbreaking attorneys.

Proposed Disposition

1. **Relief is sought against:**

Chief Judge Mary M. Schroeder.
9th Circuit Judicial Council.

District Judges Gary Feess, Audrey Collins, Lourdes Baird and John Walter.
Magistrate Charles F. Eick.
9th Circuit Judges Leavy, Thomas, Fisher, Nelson, Graber, O'Scannlain, Rymer, Bea.
Attorney General John Ashcroft.
U.S. Attorney Debra Yang.
Asst. U.S. Attorneys Luymes, Weidman.
AdvanceMed/Dyncorp.
Attorneys Cain, "Rosenthal and Smith".
All identified and unidentified Respondents with their staffs and superiors, including the EEOC, VA, OFCCP, and JRC.

2. Based on the above, pro se Graves respectfully requests the Court to disqualify each and all judges in the lower courts who handled or were assigned to any of the present or related cases. Each and all orders and/or judgments by any of such judges in the present and related cases should be immediately voided.

3. Based on the above, pro se Graves respectfully requests the Court to issue an order to Chief Judge Schroeder and the 9th Circuit Judicial Council to immediately take actions to remove LR 37 from use in the lower Courts in any case in which there is any pro se party involved.

4. Based on the above, pro se Graves respectfully requests the Court to issue orders which immediately voids any and all orders or judgments by Judge Feess and Magistrate Eick specifically in case on appeal number 04-55845. The case should be returned to the district court for a jury trial under a different judge, wih any and all previous Feess and Eick orders immediately voided. Each and all defendant attorneys in the case should be ordered to immediately produce to pro se Graves any and all documents requested by Graves within 20 days after the order, pursuant to FRCP 33(a) and 33(b)(1) through a designated officer or agent and under oath, and pursuant to FRCP 26(a), 26(b), and 34. The new jury trial should be ordered commenced within 30 days after Graves' receipt of the discovery documents. Each and all defendant attorneys should be severely sanctioned and penalized for any previously filed forged and/or fraudulant documents in the case.

5. Based on the above, each of the present and related cases should be referred to the Congress for review regarding possible impeachment proceedings against Judges Feess, Anderson, and Schroeder, and Magistrate Eick for crimes against the American People and the U.S., its Constitution and Bill of Rights.

6. Based on the above, pro se Graves respectfully requests the Court to issue an order

that each of the federal agencies, officials, and attorneys in the present and related cases be investigated for crimes against the United States, its Constitution and Bill of Rights.

7. Based on the above, pro se Graves respectfully requests the Court the Court to issue an order which requires the EEOC, JRC, and OFCCP to immediately discontinue the unlawful practice of denying FOIA Requests for United States government contractor EEO-1 Reports.

8. Based on the above, pro se Graves respectfully requests the Court to issue an order which penalizes and sanctions each and all defendants and/or their attorneys who were involved directly or indirectly in misconduct in any ot the present or related cases,

Respectfully Submitted, November 10, 2004

Michael B. Graves

Michael B. Graves, pro se

Entered January 15, 2004
Central District of California

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

Michael Ben Graves, Plaintiff v. Gary A. Feess, et al. Defendants.	CV-03-6048 PA (CTx) ORDER DISMISSING THE FIRST AMEND. COMPLAINT WITH PREJUDICE This constitutes notice of entry as required by FRCP, Rule 77(d).

Before the Court is defendants Gary A. Feess and Charles F. Eick's motion to dismiss plaintiff Michael Ben Graves's first amended complaint ("FAC"). After carefully considering the parties' papers, the Court rules as follows:

BACKGROUND

From 2001 to 2002, Graves was employed by AdvanceMed/DynCorp ("AMDC"), a government contractor for the United States Department of Veterans Affairs

("VA"). Graves reported to the VA that AMDC was submitting false claims. AMDC terminated Graves's employment in 2002. Graves then filed a claim with the United States Equal Employment Opportunity Commission ("EEOC") against AMDC, and sought documents related to his claim from the EEOC and the VA under the Freedom of Information Act ("FOIA"). Graves alleges that neither agency complied with his requests. Graves then sued AMDC, the EEOC, the VA, the U.S. Office of Federal Contracts Compliance Programs, and the Joint Reporting Committee for discrimination, retaliation, environmental violations, and FOIA violations. Graves's claims were all consolidated into one case (f1) before United States District Judge Gary A. Feess. All discovery matters were referred to United States Magistrate Judge Charles F. Eick who was to resolve all discovery disputes.

Graves is suing the judges in both their individual and official capacities. He alleges that in conspiracy with the attorneys for the defendants in the underlying case, (f2) the judges improperly denied his discovery requests under Fed.R.Civ.P.26,33,34, and 36; misused Local Rule 37; and granted the defendants summary judgment on his FOIA claim in violation of Fed.R.Civ.P.56. Graves alleges violations of his constitutional rights under Articles I, II, and III, (f3) the Seventh, Ninth, and Fourteenth Amendments, (f4) Title

VII of the Civil Rights Act of 1964, 42 USC 2000e et seq.; the Federal Rules Enabling Act, 28 USC 2072' and Executive Order 11246 (f5). Graves requests injunctive relief requiring the defendants to enforce the Federal Rules of Civil Procedure and the FOIA.

(order footnotes)

f1 - Graves filed three separate claims against the defendants which were ultimately consolidated in Graves v. United States Equl Employment Opportunity Commission, et al., Case No. Cv 02-6842 GAF (Ex).

f2 - In a separate action, Graves has sued the attorneys representing the defendants in the underlying case. See Michael Ben Graves v. John Ashcroft, et al., Case No. CV 03-6599 PA (CTx).

f3 - Article I establishes and sets out the powers of the Congress, Article II establishes ans sets out the powers of the Executive, and Article III establishes the federal judiciary.

f4 - The Seventh Amendment provides for the right to a trial by jury. The Fourteenth Amendment provides for due process and equal protection. The Ninth Amendment provides: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." However, see Strandberg v. City of Helena, 791 F.2d 744, 748 (9th Cir. 1986) ("The ninth amendment has never recognized as independently securing any constitutional right").

f5 - Executive Order 11246 provides for non-discrimination in government employment.

MOTION TO DISMISS

Notice pleading requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed.R.Civ.P.8(a). While Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," Fed.R.Civ.P.12(b)(6), they also require all pleadings to be "construed so as to do substantial justice," Fed.R.Civ.P.8(f). Consequently, "[a] motion may not ge granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief," Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct 99, 102, 2 L.Ed.2d 80 (1957). Accord Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) (quoting Williamson v. Gen. Dynamics Corp., 208 F.3d 1144, 1149 (9th Cir. 2000))). "All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." Daniel, 288 F.3d at 380 (quoting Burgett v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)).

The Ninth Circuit is particularly hostile to motions to dismiss under Fed.R.Civ.P. 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 248-249 (9th Cir. 1997) ("[t]he Rule 8 standard contains a powerful presumption against rejecting pleadings for

failure to state a claim" (internal citations omitted)). In addition, there is special leniency granted for pro se litigants. See, e.g., Thompson v. Davis, 295 F.3d 890, (9th Cir, 2002) ("We construe pro se pleadings liberally on a defendant's motion to dismiss for failure to state a claim"). Thus, the relevant inquiry for the court in assessing the appropriateness of the motion is to "determine whether or not it appears to a certainty under existing law that no relief can be granted under any set of facts that might be proved in support of plaintiffs' claims," De La Cruz v. Tormey, 582 F.2d 45, 48 99th Cir. 1978).

DISCUSSION

Judges are absolutely immune from civil liability for damages for their judicial acts. Mireles v. Waco, 502 U.S. 9, 9-10 (1991). In addition, federal judges are absolutely immune from claims for declaratory, injunctive or other equitable relief arising from their judicial acts. Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996). "Immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions....Second, a judge is not immune for actions....taken in the complete absence of all jurisdiction." Mireles, 502 U.S. at 11-12.

The first part of the immunity inquiry is whether the FAC alleges that defendants

engaged in administrative, rather than judicial, acts. Judicial acts are those "involving the performance of the function of resolving disputes between parties, or of authoritatively adjucating private rights." Atkinson-Baker & Associates, Inc. v. Kolts, 7 F.3d 1452, 1454 (9th Cir. 1993) (per curiam). Put another way, the test for determining whether an act by a judge is judicial in nature relates "to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." Mireles, 502 U.S. at 12. When the function is normally performed by a judge, and the parties dealt with the judge in his judicial capacity, the function will be considered a judicial act. Id.

"Administrative acts are, among others, those involved in supervising court employees and overseeing the efficient operation of a court," Atkinson-Baker & Associates, Inc., 7 F.3d at 1454. They are "actions which are significant independent of the fact that the actor is a judge, such as the hiring or firing of staff members." Partington v. Gedan, 961 F.2d 852, 866 (9th Cir. 1992).

Graves does not allege that defendants committed any non-judicial acts. Instead, he alleges that defendants failed to enforce the Federal Rules of Civil Procedure, and improperly ruled against him on a dummary judgment motion. Even if these allegations are

true, defendants' acts are judicial acts. Accordingly, this prong of the absolute judicial immunity defense is satisfied.

The second part of the immunity inquiry is whether the alleged acts of defendants were performed in the complete absence of all jurisdiction. For purposes of judicial immunity, a complete absence of all jurisdiction means "a clear lack of subject matter jurisdiction." Mullis v. United States Bankruptcy Court, 828 F.2d 1385, 1389 (9th Cir. 1987). Courts are to examine the nature and function of the act, not the act itself. Mireles, 502 U.S. at 13. Judicial immunity does not disappear as to those acts taken in excess of the judges' authority, but only as to those acts taken in the complete absence of all jurisdiction. Id.

Graves does not allege facts suggesting that defendants acted in the complete absence of all jurisdiction. Graves's allegations indicate a strong disagreement with defendants' rulings. Such allegations, however, do not defeat defendants' absolute immunity defense in both their individual and official capacities. See Edwards v. Wilkinson, 233 F. Supp.2d 34, 37 (D.D.C.2002) ("Tlhe nature of the act and not the identity of the individual determines whether absolute judicial immunity is applicable. Thus, so long as the act involves a judicial function, immunity applies regardless of whether the plaintiff is suing the judge in her individual or official capacity").

DISMISSAL WITH PREJUDICE

"Dismissal with prejudice is proper under Rule 12(b)(6) only if it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Bautista v. Los Angeles County, 216 F.3d 837, 842 (9th Cir. 2000) (quoting Conley 355 U.S. at 45). This is all the more so with pro se pleadings, as "[c]ourts have a duty to construe pro se pleadings liberally, including pro se motions as well as complaints," Bernhardt v. Los Angeles County, 339 F.3d 920, 925 (9th Cir. 2003). But see Flowers v. First Hawaiian Bank, 295 F.3d 966 (9th Cir. 2002) ("A pro se litigant must be given leave to amend his or her complaint unless it is obviously clear that the deficiencies in the complaint could not be cured by amendment...A district court....does not abuse its discretion in denying leave to amend where amendment would be futile").

As Graves' complaint stands, it does not properly plead a claim upon which relief can be granted. Graves has amended his complaint once, and has filed a motion to amend his complaint a second time, which the Court has carefully reviewed(f6). The only substantive change in his second amended complaint is that Graves now charges defendants with violating Article VI of the Constitution (f7) and the Fifth Amendment. These additional allegations

do nothing to address the deficiency identified in his complaint: specifically, why judicial immunity does not completely bar his claims.

The Court finds that granting Graves leave to amend his complaint yet another time would be futile; accordingly, defendants' motion to dismiss Graves's FAC is granted without leave to amend.

IT IS SO ORDERED.

Date: January 14, 2004

(signature)

Percy Anderson
UNITED STATES DISTRICT JUDGE

(order footnotes)

f6 - Graves also filed a motion for judicial notice of claims he intends to make in his amended complaint, which the Court denied. While "[g]enerally, on a 12(b)(6) motion, the District Court should consider only the pleadings," Shaver v. Operating Engineers Local 428 Pension Trust Fund, 332 F.3d 1198, 1201 (9th Cir. 2003), the Court has nevertheless considered the content of this motion, along with Graves's proposed second amended complaint, in deciding whether to grant Graves leave to amend his complaint yet again. See, Broam v. Bogan, 320 F.3d 1023, 1026 (9th Cir. 2003) ("Facts raised for the first time in plaintiff's

opposition papers should be considered by the court in determining whether to grant leave to amend or to dismiss the complaint with or without prejudice").

f7 - Article VI cl.3 of the Constitution provides that: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several states, shall be bound by Oath or Affirmation, to support this Constitution....."

Filed April 26, 2004
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Michael Ben Graves	No. 04-55138
plaintiff/appellant	D.C. CV-03-6048
v.	Memorandum*
Gary Feess, et al.,	
defendants/appellees	

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted April 22, 2004**

Before: O'Scannlain, Rymer, and Bea, Circuit Judges

Appellant's suggestion for initial hearing en banc is denied.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P.34(a)(2).

A review of the record and appellant's opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. See United States v. Hooton, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

Accordingly, appellees' motion for summary affirmance of the district court's judgment is granted. See Forrester v. White, 484 U.S. 219 (1988); Meek v. County of Riverside, 183 F.3d 962 (9th Cir. 1999).

All other pending motions are denied as moot.

AFFIRMED.

Filed October 1, 2004
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Michael Ben Graves	No. 04-55138
plaintiff/appellant	D.C. CV-03-6048
v.	Order
Gary Feess, et al.,	
defendants/appellees	

Before: O'Scannlain, Rymer and Bea, Circuit Judges

Judges O'Scannlain, Rymer and Bea vote to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed.R.App.P.35.

The petition for panel rehearing and the petition for rehearing en banc are **DENIED.**

Appellant's requests that the panel "self-recuse," appellees be directed to file a brief, and that this court sanction appellees for

misconduct are **DENIED.**

Appellant's alternative request that this case be returned to the district court is **DENIED.**

Appellant's request for publication of the April 26, 2004, memorandum is **DENIED.**

There shall be no further filings accepted in this closed case.

Entered January 16, 2004
Central District of California

FOR THE CENTRAL DISTRICT OF CALIFORNIA

Michael Ben Graves, Plaintiff v. Mary Schroeder, et al. Defendants.	CV-03-6450 PA ORDER DISMISSING THE FIRST AMEND. COMPLAINT WITH PREJUDICE This constitutes notice of entry as required by FRCP, Rule 77(d).

Before the Court is defendants Mary M. Schroeder and the Ninth Circuit Judicial Council's (the "Judicial Council") motion to dismiss plaintiff Michael Ben Graves's first amended complaint ("FAC"). After considering the parties' papers, the Court rules as follows:

BACKGROUND

From 2001 to 2002, Graves was employed by AdvanceMed/DynCorp ("AMDC"), a government contractor for the United States Department of Veterans Affairs ("VA"). Graves reported to the VA that AMDC was submitting false claims. AMDC terminated his employment in 2002. Graves then filed a claim with the United States Equal Employment Opportunity Commission ("EEOC") against AMDC, and sought documents related to his claim from the EEOC and the VA under the Freedom of Information Act ("FOIA"). Graves alleges that neither agency complied with his requests. Graves then sued AMDC, the EEOC, the VA, the U.S. Office of Federal Contracts Compliance Programs, and the Joint Reporting Committee for discrimination, retaliation, environmental violations, and FOIA violations. Graves's claims were all consolidated into one case (f1) before United States District Judge Gary A. Feess. All discovery matters were referred to United States Magistrate Judge Charles F. Eick who was to resolve all discovery disputes.

Graves alleges that the judges require him to prepare a joint stipulation pursuant to

f1 - Graves filed three separate claims against the defendants which were ultimately consolidated in Graves v. United States Equal Employment Opportunity Commission, et al. Case No. CV 02-6842 GAF (Ex).

Local Rule 37 before bringing discovery motions and that this practice violates Fed.R.Civ.P. 1, 37 and 83. He contends the judges and attorneys in his underlying case have conspired to dismiss his case through their misuse of Local Rule 37. He also alleges that in conspiracy with the attorneys in the underlying case, the judges refused to allow discovery on his FOIA claims and unlawfully granted summary judgment dismissing his FOIA claims.(f2).

Graves is suing the Judicial Council (f3) and Shroeder in her individual and official capacities as Chief Judge of the United States Court of Appeals for the Ninth Circuit and Presiding Officer of the Ninth Circuit Judicial Council. Graves's maintains that "the Ninth Circuit and Chief Judge Schroeder have to date failed and refused to address this LR 37 matter in the district court, masking the matter under the general guise that "commplaints are .

f2 - In separate actions, Graves has sued Judge Feess, Judge Eick, and the attorneys representing the defendants in his underlying case for conspiring with each other to dismiss his claims. See Michael Ben Graves v. John Ashcroft, et al., Case No. CV 03-6599 PA (CTx); and Michael Ben Graves v. Gary A. Feess, et al Case No. CV 03 6048 PA.

f3 - The caption of Graves's complaint indicates that he is suing only Chief Judge Schroeder in her official capacity as presiding officer of the Judicial Council. The body of his complaint, however, indicates that he is suing the Judicial Council as well.

dismissed because the issue allegedly is a judge's or magistrate's decision, "(FAC para8). He also alleges that the Chief Judge schroeder and the Judicial Council have rejected a judicial misconduct complaint he filed against the judge in his underlying case. (FAC para 10 & 11).

Graves contends that the rejection of his claim violates Article III of the Constitution (f4), the judicial oath of office, 28 USC 453, 28 USC 332(d)(4), which provides for the periodic review of local rules by judicial councils, the Federal Rules enabling Act, 28 USC 2072; the FOIA; Executive Order 11246 (f5), and Title VII of the Civil Rights Act of 1964, 42 USC 2000e et seq. ("Title VII"). Graves requests injunctive relief requiring defendants to modify or abrogate Local Rlule 37 and prohibiting the defendants from issuing orders in violation of the FOIA, Title VII, and Executive Order 11246.

f4 - Article III establishes the federal judiciary.

f5 - Executive Order 11246 provides for non-discrimination in government employment.

MOTION TO DISMISS

Notice pleading requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed.R.Civ.P.8(a). While Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," Fed.R.Civ.P.12(b)(6), they also require all pleadings to be "construed so as to do substantial justice," Fed.R.Civ.P.8(f). Consequently, "[a] motion may not ge granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief," Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct 99, 102, 2 L.Ed.2d 80 (1957). Accord Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) (quoting Williamson v. Gen. Dynamics Corp., 208 F.3d 1144, 1149 (9th Cir. 2000))). "All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." Daniel, 288 F.3d at 380 (quoting Burgett v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)).

The Ninth Circuit is particularly hostile to motions to dismiss under Fed.R.Civ.P. 12(b)(6). See, e.g., Gilligan v. Jamco Dev.Corp., 108 F.3d 246, 248-249 (9th Cir. 1997) ("[t]he Rule 8 standard contains a powerful presumption against rejecting

pleadings for failure to state a claim" (internal citations omitted)). In addition, there is special leniency granted for pro se litigants. See, e.g., Thompson v. Davis, 295 F.3d 890, (9th Cir, 2002) ("We construe pro se pleadings liberally on a defendant's motion to dismiss for failure to state a claim"). Thus, the relevant inquiry for the court in assessing the appropriateness of the motion is to "determine whether or not it appears to a certainty under existing law that no relief can be granted under any set of facts that might be proved in support of plaintiffs' claims," De La Cruz v. Tormey, 582 F.2d 45, 48 99th Cir. 1978).

DISCUSSION

1. Graves's Claim against Judge Schroeder

Judges are absolutely immune from civil liability for damages for their judicial acts. Mireles v. Waco, 502 U.S. 9, 9-10 (1991). In addition, federal judges are absolutely immune from claims for declaratory, injunctive or other equitable relief arising from their judicial acts. Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996). "Immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions....Second, a judge is not immune for actions....taken in the complete absence of all jurisdiction." Mireles, 502 U.S. at 11-12.

The first part of the immunity inquiry is whether the FAC alleges that defendants engaged in administrative, rather than judicial, acts. Judicial acts are those "involving the performance of the function of resolving disputes between parties, or of authoritatively adjucating private rights." Atkinson-Baker & Associates, Inc. v. Kolts, 7 F.3d 1452, 1454 (9th Cir. 1993) (per curiam). Put another way, the test for determining whether an act by a judge is judicial in nature relates "to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." Mireles, 502 U.S. at 12. When the function is normally performed by a judge, and the parties dealt with the judge in his judicial capacity, the function will be considered a judicial act. Id.

"Administrative acts are, among others, those involved in supervising court employees and overseeing the efficient operation of a court," Atkinson-Baker & Associates, Inc., 7 F.3d at 1454. They are "actions which are significant independent of the fact that the actor is a judge, such as the hiring or firing of staff members." Partington v. Gedan, 961 F.2d 852, 866 (9th Cir. 1992).

Graves does not allege that Chief Judge Schroeder committed any non-judicial acts. Instead, he alleges that Chief Judge Schroeder failed to prevent the judges from issuing

rulings against him. Even if these allegations are true, Chief Judge Schroeder's acts are judicial acts. Accordingly, this prong of the absolute judicial immunity defense is satisfied.

The second part of the immunity inquiry is whether the alleged acts of Chief Judge Schroeder were performed in the complete absence of all jurisdiction. For purposes of judicial immunity, a complete absence of all jurisdiction means "a clear lack of subject matter jurisdiction." Mullis v. United States Bankruptcy Court, 828 F.2d 1385, 1389 (9th Cir. 1987). Courts are to examine the nature and function of the act, not the act itself. Mireles, 502 U.S. at 13. Judicial immunity does not disappear as to those acts taken in excess of the judges' authority, but only as to those acts taken in the complete absence of all jurisdiction. Id.

Graves does not allege facts suggesting that Chief Judge Schroeder acted in the complete absence of all jurisdiction. Graves's allegations indicate a strong disagreement with defendants' rulings. Such allegations, however, do not defeat defendants' absolute immunity defense in both their individual and official capacities. See Edwards v. Wilkinson, 233 F. Supp.2d 34, 37 (D.D.C.2002) ("Tlhe nature of the act and not the identity of the individual determines whether absolute judicial immunity is applicable. Thus, so long as the act involves

a judicial function, immunity applies regardless of whether the plaintiff is suing the judge in her individual or official capacity").

2. Graves's Claim against the Ninth Circuit Judicial Council:

Graves does not allege the Judicial Council committed any non-judicial acts. Nor does he allege that the Judicial Council acted in the complete absence of all jurisdiction. Graves only alleges that the Judicial Council has rejected his judicial misconduct complaint. However, the Judicial Council is protected by the same absolute judicial immunity afforded to judges. See Overton v. Torruella, 183 F.Supp. 2d 295, 300 (D. Mass. 2001) ("The Judicial Council is expresly empowered by law to pass judgment on complaints of judicial misconduct, and to thereby withhold or impose disciplinary measures in response to a complaint...This function is a form of adjudication and therefore falls within the scope of functions protected by absolute immunity.")

DISMISSAL WITH PREJUDICE

"Dismissal with prejudice is proper under Rule 12(b)(6) only if it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Bautista v. Los Angeles County, 216

F.3d 837, 842 (9th Cir. 2000) (quoting Conley 355 U.S. at 45). This is all the more so with pro se pleadings, as "[c]ourts have a duty to construe pro se pleadings liberally, including pro se motions as well as complaints," Bernhardt v. Los Angeles County, 339 F.3d 920, 925 (9th Cir. 2003). But see Flowers v. First Hawaiian Bank, 295 F.3d 966 (9th Cir. 2002) ("A pro se litigant must be given leave to amend his or her complaint unless it is obviously clear that the deficiencies in the complaint could not be cured by amendment...A district court....does not abuse its discretion in denying leave to amend where amendment would be futile").

As Graves' complaint stands, it does not properly plead a claim upon which relief can be granted. Graves has amended his complaint once, and has filed a motion to amend his complaint a second time, which the Court has carefully reviewed(f6). The only substantive

f6 - Graves also filed a motion for judicial notice of claims he intends to make in his amended complaint, which the Court denied. While "[g]enerally, on a 12(b)(6) motion, the District Court should consider only the pleadings," Shaver v. Operating Engineers Local 428 Pension Trust Fund, 332 F.3d 1198, 1201 (9th Cir. 2003), the Court has nevertheless considered the content of this motion, along with Graves's proposed second amended complaint, in deciding whether to grant Graves leave to amend his complaint yet again. See, Broam v. Bogan, 320 F.3d 1023, 1026 (9th Cir. 2003) ("Facts raised for the first time in plaintiff's

opposition papers should be considered by the court in determining whether to grant leave to amend or to dismiss the complaint with or without prejudice").

change in his second amended complaint is that Graves now charges defendants with violating Article VI of the Constitution (f7) and the Fifth Amendment. These additional allegations do nothing to address the deficiency identified in his complaint: specifically, why judicial immunity does not completely bar his claims.

The Court finds that granting Graves leave to amend his complaint yet another time would be futile; accordingly, defendants' motion to dismiss Graves's FAC is granted without leave to amend.

IT IS SO ORDERED.

Date: January 14, 2004

(signature)

Percy Anderson
UNITED STATES DISTRICT JUDGE

f7 - Article VI cl.3 of the Constitution provides that: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several states, shall be bound by Oath or Affirmation, to support this Constitution....."

Filed June 21, 2004
9th Circuit Court

United States Court of Appeals
For the Ninth Circuit

Michael Ben Graves	No. 04-55211
Plaintiff-Appellant	DC# CV-03-6450 PA
v.	Memorandum*
Mary Schroeder, et al	
Defendants-Appellees	

Appeal from the United States District Court
for the Central District of California

Percy Anderson, District Judge, Presiding
Submitted June 14, 2004**

Before: Leavy, Thomas, and Fisher, Circuit Judges.

The Clerk shall file appellant's late opposition to the motion for summary affirmance, received on April 14, 2004.

* - This disposition is not approprate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** - This panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P.34(a)(2).

Appellee's motion for summary affirmance is granted because the questions raised in this appeal are so insubstantial as not to require further argument. See United States v. Hooton, 693 F.2d 857, 858 (9th cir. 1982) (per curiam). We therefore summarily affirm the district court's judgment.

All pending motions are denied as moot.

AFFIRMED.

Filed August 23, 2004
9th Circuit Court

United States Court of Appeals
For the Ninth Circuit

Michael Ben Graves Plaintiff-Appellant, v. Mary Schroeder, et al, Defendants-Appellees	No. 04-55211 DC# CV-03-6450 PA ORDER

Before: Leavy, Thomas, and Fisher, Circuit Judges.

The panel has voted to deny appellant's petition for panel rehearing. Judges Thomas and Fisher have voted to deny the petition for rehearing en banc, and Judge Leavy so recommends.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed.R.App.P.35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

Appellant's motion for publication of the June 21, 2004 memorandum disposition under Ninth Circuit Rule 36-4 is denied.

No motions for reconsideration, rehearing, clarification,m stay of mandate, or any other submissions shall be entertained in this closed docket.

F